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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON
ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by the International Confederation of Free Trade Unions, a non-governmental organization in consultative status (category I)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1988/4.

[5 November 1993]

1. The International Confederation of Free Trade Unions, an organization in Category I consultative status with the Economic and Social Council, is committed to, inter alia, promoting the universal respect of the internationally-recognized principles of freedom of association, the right to organize and to collective bargaining. It therefore welcomes the Committee's renewed invitation to submit to it relevant information concerning the compliance of State parties with the provisions of the Covenant on Economic, Social and Cultural Rights. It is in particular keen on contributing to the examination by the Committee of the implementation by State parties of article 8 of the Covenant, which guarantees the right of workers to form and join trade unions, the right of these unions to function freely and the right to strike.

Trade union rights and the Covenant's provisions

2. Submissions to the Committee by international trade union organizations may look particularly relevant following the inclusion of the notion of trade union rights in the Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights (Vienna, July 1993). It should be noted in this respect that this important document specifically refers to the International Covenant on Economic, Social and Cultural Rights in its consideration of trade union rights, as follows:

> "The World Conference supports all measures by the United Nations and its relevant specialized agencies to ensure the effective protection and promotion of trade union rights, as stipulated in the International Covenant on Economic, Social and Cultural Rights, and other relevant international instruments. It calls on all States to fully abide with their obligations in this respect." (Art. 77, Vienna Declaration and Programme of Action)

Description of Trade Union Rights

3. Therefore, and before addressing the particular record of compliance with the Covenant of countries whose reports will be examined by the Committee at its next session, it may be useful to briefly summarize our organization's understanding of trade union rights. The following definition is taken from a statement adopted by the XIIIth World Congress of the ICFTU (Oslo, May 1983). It is generally recognized as reflecting objectively the contents of relevant international legal instruments as well as the jurisprudence developed by supervisory bodies or mechanisms established under these instruments, including those of the International Labour Organisation. In addition however, the Committee's attention should be called to the significant correlation between the definition contained hereafter and specific provisions of the Covenant. For this purpose we have indicated between square brackets, where relevant, those provisions of the Covenant which support our definition. Hence, it is generally accepted that, in all countries:

- all workers, without distinction whatsoever, must have the right to establish and, subject only to the rules or the organization concerned, to join organizations of their own choosing without previous authorization [cfr. ICESCR, art. 8, § 1 (a)];

- trade unions must be able, without interference from the public authorities, to draw up their constitutions and rules, to elect their representatives in full freedom to organize their administration and activities and to formulate their programmes [cfr. art. 8, § 1 (c) and art. 8, § 3 (as relevant)];

- trade unions must not be liable to be dissolved or suspended by administrative action [idem.];

- trade unions must be free to establish and join federations and confederations and any such organization has the right to affiliate to international trade union organizations [art. 8, § 1 (b)];

- workers must have adequate protection against acts of anti-union discrimination regarding their employment, and trade unions must be protected against any acts of interference by employers in their establishment, functioning and administration;

- trade unions must be able to bargain collectively to regulate terms and conditions of employment and all other matters affecting the livelihood of all workers [art. 8, § 1 (a)];

- workers and their trade unions must be able to take strike and other industrial action [art. 8, § 1 (d)].

Other rights guaranteed under the Covenant

4. In addition to trade union rights themselves and to their interpretation under the Covenant, the implementation by State parties of a number of other provisions of the Covenant may be of particular interest to trade union organizations. These include, inter alia, the right to work (art. 6), to just and favourable conditions of work (art. 7), to social security (art. 9), to child and mother protection (art. 10), to adequate standards of living (art. 11) and healthcare (art. 12) and to education (art. 13). Furthermore, there may exist a correlation between the enjoyment of some of these rights and the implementation by State parties of trade union rights as covered by article 8 of the Covenant. It could be argued for example, in respect of one country whose periodic report is to be considered by the Committee on Economic, Social and Cultural Rights at its forthcoming session (November 1993), whether legislative restrictions on the right to organize imposed in that country on the teaching profession are of a nature to contribute to the realization of article 13, in general, and of its § 3, in particular.

5. For this reason, the ICFTU would very much welcome the Committee calling the attention of State parties to the Covenant to the importance of, prior to submitting their reports to the Committee, seeking the views of their national trade union centres on the realization of the Covenant's provisions in their country, and to reflect adequately these views in their reports.

Interrelationship of human rights

6. Furthermore, and as recently reaffirmed by the World Conference, the realization of economic, social and cultural rights is closely interrelated with the respect of civil and political rights. The ICFTU itself is involved on a daily basis with the defence of the right to life and to personal security of trade unionists in various regions of the world. It therefore considers that any State party to the Economic Rights Covenant responsible for or allowing the killing, arbitrary detention or torture of trade unionists would ipso facto stand in breach of article 8 of the Covenant. In many countries in the world, this is indeed the case. The ICFTU shall endeavour to bring such facts to the attention of the Committee, as relevant.

Reservations and other restrictions by State parties to the Covenant

7. The ICFTU views with deep concern the significant number of State parties to the Covenant that have entered reservations of other restrictive statements concerning article 8 and/or other articles guaranteeing rights of which the free exercise is relevant to trade union organizations. Therefore, and in line with the conclusions of the Vienna World Conference on Human Rights, the ICFTU requests the Committee to invite all State parties concerned to examine, as a matter of priority, all possibilities of withdrawing reservations or other restrictive interpretations of article 8 of the covenant at the earliest opportunity and to inform the Committee of their intentions in this respect.

Reservations by State parties whose reports will be examined at the Committee's ninth session

(a) New Zealand

8. The attention of the Committee is called to the reservation concerning trade union rights made by that country at the time of its ratification of the Covenant (28 December 1978). For easy reference, the relevant section of this reservation is reproduced hereafter:

> "The Government of New Zealand reserves the right not [to] apply article 8 to the extent that **existing*** legislative measures, enacted to ensure effective trade union representation and encourage orderly industrial relations, may not be fully compatible with that article ..."

9. In view of the fact that this reservation clearly pertains to the legislative situation prevailing at the time of the ratification by New Zealand, the ICFTU considers that it cannot be invoked to justify any of the restrictions on trade union rights introduced by the Employment Contracts Act, which entered into force on 15 May 1991 and which in our view violates article 8 of the Covenant. Furthermore, and in line with the previous section, the Government should in our view be requested to withdraw this reservation.

(b) Mexico

10. The following interpretative statement was made by the Government of Mexico at the time of accession (23 March 1981):

> "The Government of Mexico accedes to the International Covenant on Economic, Social and Cultural Rights with the understanding that article 8 of the Covenant shall be applied in the Mexican Republic under the conditions and in conformity with the procedure established in the applicable provisions of the Political Constitution of the United Mexican States and the relevant implementing legislation."

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* Our emphasis

11. In this respect, the ICFTU considers that the Government should be requested to inform the Committee as to whether there might exist in the domestic legislation of the United Mexican States any provisions contrary to article 8 of the Covenant and whether its practice is consistent with said legislation. In case that either law or practice are contrary to the Covenant, the Government should be requested to inform the Committee as to which action it may consider taking in order to remedy this situation. Alternatively, the Government should be requested to withdraw the interpretative statement.

State parties' reports to be considered by the Committee at its ninth session

12. For the purposes of the present communication, the ICFTU wishes to limit itself to the submission of information concerning the compliance with the Covenant by two countries: New Zealand and Mexico. A summary explanation of the violations of trade union rights that have occurred in these two countries has been published in the ICFTU's annual Survey of Trade Union Rights Violations (1992 and 1993 issues). A copy of these documents is enclosed herewith (New Zealand: Appendix 1, and Mexico: Appendix 2). The ICFTU considers that the restrictions to the free functioning of trade unions described in these documents constitute infringements of article 8 of the Covenant.